

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

THE CITY OF HUNTINGTON,

Plaintiff,

v.

AMERISOURCEBERGEN DRUG
CORPORATION, *et al.*

Defendants.

Civil Action No. 3:17-01362

CABELL COUNTY COMMISSION,

Plaintiff,

v.

AMERISOURCEBERGEN DRUG
CORPORATION, *et al.*

Defendants.

Civil Action No. 3:17-01665

**DEFENDANTS' RESPONSE TO STATE OF WEST VIRGINIA'S
COMBINED MOTION FOR LEAVE TO FILE A BRIEF AS *AMICUS CURIAE*
IN SUPPORT OF PLAINTIFFS AND LEAVE TO EXCEED PAGE LIMIT**

Defendants submit this response to the motion by the Attorney General of the State of West Virginia ("Attorney General") to file an *amicus* brief in support of Plaintiffs' opposition to Defendants' motions regarding *res judicata* and release. *See* Dkt. No. 257.

The Attorney General filed his request for leave, accompanied by a copy of his proposed *amicus* brief, on March 27. As the Court is aware, Defendants were required to file—and did file—reply briefs in support of their motions *two days earlier*, on March 25. Accordingly, Defendants did not have an opportunity to respond in their reply briefs to either the legal arguments or the unsworn factual averments regarding Defendants' separate settlement negotiations with the State set forth in the Attorney General's proposed *amicus* brief.

Where, as here, a putative *amicus* seeks to file a brief *after* the close of briefing by the parties, courts routinely and appropriately deny motions for leave to file amicus briefs. *See, e.g.*, 4 Am. Jur. 2d Amicus Curiae § 3 (“A court will deny a motion for leave to submit an amicus curiae brief that is filed after the normal briefing cycle set for the party to be supported, where the amici fail to show the requisite extraordinary cause for leave to file their brief.”).

Notwithstanding the fact that the Attorney General’s request is untimely and the absence of any “extraordinary cause” for the late filing, Defendants do not oppose the filing of the Attorney General’s proposed amicus brief—provided that (1) Defendants be permitted to submit a joint response (of no more than 15 pages) to the Attorney’s General’s brief on or before Monday, April 6, and (2) neither the Attorney General nor Plaintiffs be permitted any further reply or sur-reply, since briefing has already closed. Defendants respectfully submit that it would be unfair and prejudicial to allow the Attorney General to file an *amicus* brief without giving Defendants the opportunity to respond to the statements and arguments made in that brief.

Dated: March 31, 2020

Respectfully submitted,

/s/ Jeffrey M Wakefield

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